

No. 83377-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

HARRY N. CARRIER,

PETITIONER.

PERSONAL RESTRAINT PETITION

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2009 JUL 22 AM 8:00
CLERK
OF RONALD N. CARPENTER

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A. STATUS OF PETITIONER

Harry N. Carrier (hereinafter “Carrier”) challenges his 2006 Pierce County “life” sentence as a result of a persistent offender finding (Case No. 04-1-03722-2).

B. FACTS

On June 13, 2005, Harry Carrier was charged and pled guilty to Child Molestation in the First Degree, and two other related (but, non-strike) crimes. He was sentenced on February 10, 2006. At that time, the sentencing court found that Carrier’s 1981 conviction for Indecent Liberties was comparable to Child Molestation in the First Degree. As a result, the sentencing court further found that Carrier was a “two strikes” persistent offender. Carrier’s current *Judgment* specifically notes the Indecent Liberties conviction as “criminal history.” *See Judgment and Sentence* attached as Appendix A.

It is factually uncontested that Carrier’s Indecent Liberties conviction has been “dismissed and the defendant discharged” pursuant RCW 9.95.240. *See Order for Dismissal of Cause* attached as Appendix B (and submitted by State with its *Sentencing Memorandum* in the trial court). As the dismissal order reveals, on April 5, 1985, Carrier was permitted to “withdraw or set aside” the finding of guilt; enter a plea of “not guilty;” and case was dismissed—releasing Carrier from “all penalties and disabilities” resulting from the filing of the charge.

This is the first time this issue has been raised in Carrier's case. At his persistent offender sentencing, defense counsel did not argue that the conviction could not be counted as criminal history despite the fact that it had been dismissed. *See* Transcript of Persistent Offender Sentencing from Direct Appeal file.

Carrier appealed (Case No. 24557-9). Once again, this issue of whether Carrier's dismissed conviction still constituted "criminal history" was not raised. Carrier's convictions and sentence were affirmed. The Court of Appeals issued its mandate on July 6, 2007.

This is Carrier's first *Personal Restraint Petition* attacking this judgment.

C. ARGUMENT

Introduction

In the 25-plus year history of Washington's Sentence Reform Act, this Court has never decided whether a pre-SRA deferred and dismissed judgment constitutes "criminal history." While two appellate divisions have held that a pre-SRA dismissed conviction counts as criminal history, those decisions rely exclusively on a statute that pre-dated the SRA and could not, by definition, reflect an intent about laws that did not exist, yet.

More importantly, this Court's decision in *State v. Breazeale*, 144 Wn.2d 829, 31 P.3d 1155 (2001), where this Court equated such dismissals

to the modern concept of “vacation,” provides compelling support for the conclusion that those lower court cases were incorrectly decided.

Mr. Carrier has filed his PRP in this Court in order to resolve this conflict in the caselaw. Since this is an issue of statutory interpretation, Carrier starts there.

Rules of Statutory Construction

This case involves the interpretation and intersection of pre- and post-SRA law. The SRA changed Washington’s sentencing scheme in several significant ways. As a result, pre- and post-SRA law are not always congruent. Carrier starts his argument in the past.

This case involves the construction of several statutes and is strictly a question of law. *Millay v. Cam*, 135 Wash.2d 193, 198, 955 P.2d 791 (1998). It is the duty of the court to construe statutes in the manner that best fulfills the legislative purpose and intent. *State ex rel. Royal v. Bd. of Yakima County Comm'rs*, 123 Wash.2d 451, 462, 869 P.2d 56 (1994). The court must reconcile apparently conflicting statutes and give effect to each of them, if this can be achieved without distortion of the language used. *Tommy P. v. Bd. of County Comm'rs*, 97 Wash.2d 385, 391-92, 645 P.2d 697 (1982). As a remedial statute, RCW 9.95.240 must be construed liberally so as to give effect to its purpose.

Parallels Between Vacation and Dismissed Pre-SRA Convictions

Prior to adoption of the Sentencing Reform Act of 1981 (SRA), trial courts could suspend or defer imposition of sentence and place defendants on probation in lieu of prison. Upon successful completion of probation, the court could, under RCW 9.95.240—a statute in existence in similar form since 1939—set aside a finding or plea of guilty, allow the defendant to plead not guilty, and then dismiss the information.

RCW 9.95.240 (1) provides:

Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

In adopting the SRA, the Legislature provided a procedure in RCW 9.94A.640 which parallels RCW 9.95.240.

The SRA abolished “deferred sentences.” However, as this Court has previously noted it adopted a similar concept: vacation.

RCW 9.94A.640 (1) provides:

Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

As Petitioner alluded to earlier, much like its pre-SRA predecessor, the RCW 9.94A.640, provides “(o)nce the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense.” RCW 9.94A.640 (3).

Thus, the SRA version of the statute permits the court to *vacate* the information; the pre-SRA statute permits *dismissal* of the information. This is a distinction without a difference. To “vacate” is to annul, set aside, cancel or rescind; to render an act void, as in “to vacate an entry of record, or a judgment.” BLACK'S LAW DICTIONARY 1548 (6th Ed.1990). A “dismissal” is an order or judgment finally disposing of an action without

trial of the issues involved.

Other than the name of the remedy, the statutes are virtually identical. Both statutes permit the offender to withdraw a plea of guilty and to enter a plea of not guilty. Both permit the court in its discretion to set aside the verdict of guilty. Both permit the court to dismiss the information or indictment. Both release the offender from all penalties or disabilities resulting from the offense. And both statutes eliminate all adverse consequences of the conviction except for the State's retained option to plead and prove the conviction in a subsequent prosecution. Which is why this Court stated: “We, however, can discern no functional or practical distinction between the two statutes.” *State v. Breazeale*, 144 Wn.2d 829, 31 P.3d 1155 (2001).

Dismissed Pre-SRA Convictions and the Concept of Criminal History

Because RCW 9.95.240 pre-dates the SRA, the statute cannot by definition reflect a legislative intent regarding an “offender score” calculation. Thus, the statute’s language regarding the use of a dismissed convictions in a subsequent prosecution has no application to a subsequent sentencing where prior convictions count as points—a concept largely foreign to pre-SRA law.

Instead, the SRA answers this question. The SRA explicitly sets forth how to calculate an offender score.

“Criminal history,” means the list of a defendant's prior convictions:

- (a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.
- (b) A conviction may be removed from a defendant's criminal history *only if it is vacated pursuant to* RCW 9.96.060, 9.94A.640, **9.95.240**, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.
- (c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

RCW 9.94A.030 (14).

Here, it is indisputable that Carrier’s prior “strike” was vacated pursuant to RCW 9.5.040. Thus, the SRA tells us it does not count as “criminal history.”

Which is exactly what happened in this case: Carrier’s indecent liberties case was dismissed after he successfully complied with the conditions of probation pursuant to RCW 9.95.240. Because Carrier’s persistent offender judgment includes his Indecent Liberties conviction as

criminal history, that judgment is “facially invalid,” making this petition timely.

This Court has previously held that “the Legislature intended RCW 9.95.240 to function in the same manner as the later statute, RCW 9.94A.230 [now 640].” *State v. Breazeale*, 144 Wn.2d 829, 31 P.3d 1155 (2001). Under the SRA, the same procedure that results in a dismissal under the probation act allows the court to grant dismissal and clear the conviction record. “We hold that the Legislature intended RCW 9.95.240 to function in the same manner as the later statute, RCW 9.94A.230, and that both statutes provide courts with the authority to vacate records of conviction.” *Id.* at 844.

For example, this Court has interpreted the language common to both statutes, “released from all penalties and disabilities,” to mean that a person who has been granted dismissal under RCW 9.95.240 is entitled to assert that he or she has never been convicted. *In re Discipline of Stroh*, 108 Wash.2d 410, 417-18, 739 P.2d 690 (1987). RCW 9.95.240 “is a legislative expression of public policy ... [that] a deserving offender [is restored] to his [or her] pre-conviction status as a full-fledged citizen.” *Matsen v. Kaiser*, 74 Wash.2d 231, 237, 443 P.2d 843 (1968) (Hamilton, J., concurring). This conclusion is also supported by comments from the Sentencing Guidelines Commission. As Professor David Boerner has

observed, “[v]acation operates to ‘clear the record of conviction’ in the same manner as did the Probation Act [RCW 9. 95. 240].” David Boerner, *Sentencing in Washington* § 11.6, at 11-7 (1985); *see also* Wash. Sentencing Guidelines Comm'n, *Sentencing Guidelines Implementation Manual* cmt. at II-21 (1984) (“This vacation of the conviction is analogous to the dismissal obtained under RCW 9. 95.240”).

Prior Decisions from the Court of Appeals Have Been Overruled By Implication and Should Now Be Explicitly Overruled

Nevertheless, in *State v. Moore*, 75 Wn. App. 166, 169, 876 P.2d 959 (1994), the Court of Appeals held that a dismissed, pre-SRA conviction counted as criminal history reasoning that dismissal under RCW 9.95.040 was not the equivalent of vacation—reasoning that was rejected in *Breazeale*. *See also State v. Wade*, 44 Wash. App. 154, 160, 721 P.2d 977, *rev. denied*, 107 Wash.2d 1003 (1986).

Those cases focus exclusively on the language in the pre-SRA statute that conviction information may be used in a subsequent prosecution to conclude that a conviction dismissed under RCW 9.95.240 counts as criminal history. As indicted previously, for the Legislature to intend such a purpose it must have possessed a crystal ball enabling it to look into the future.

Instead, that language meant that a conviction could be pleaded and proved as an *element* of a criminal prosecution. See *United States v. Potts*, 528 F.2d 883 (9th Cir. 1975). In addition, a dismissed conviction may be used to impeach an offender's credibility in his subsequent criminal prosecution. *State v. Knott*, 6 Wash.App. 436, 493 P.2d 1027 (1972). Likewise, "(t)he above language shows a clear legislative intent that those convicted of robbery should be excluded from reinstatement of firearm possession rights by mere virtue of a suspended sentence and subsequent dismissal." *Nakatani v. State*, 109 Wn. App. 633, 636, 36 P.3d 1116 (2004).

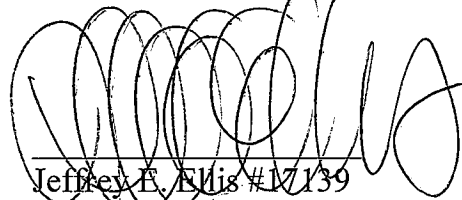
This is the only way to read both the pre- and post-SRA statutes in harmony. RCW 9.95.240 and its exceptions must be strictly construed. *All* adverse consequences of conviction are expunged except as expressly limited by the proviso. *In re Disciplinary Proceeding of Stroh*, 108 Wash.2d 410, 417-18, 739 P.2d 690 (1987) (defendant dismissed under RCW 9.95.240 is entitled to assert he has never been convicted). No other exceptions should assumed by implication. *State v. Walker*, 14 Wash.App. 348, 353, 541 P.2d 1237 (1975). That is especially true of an exception, use of a prior conviction as "criminal history," that did not exist at the time RCW 9.94.240 became law.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate Carrier's persistent offender "life" sentence and remand this case to Pierce County Superior Court for resentencing.

DATED this 21st day of July, 2009.

Respectfully Submitted:



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APPENDIX A

FILED
DEPT. 11
IN OPEN COURT

FEB 10 2006

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

Pierce County Clerk

By.....
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03722-2

vs.

JUDGMENT AND SENTENCE (JS)

HARRY NATHAN CARRIER

Defendant.

☒ Prison
☐ Jail One Year or Less
☐ First-Time Offender
☐ SSOSA
☐ DOSA
☐ Breaking The Cycle (BTC)

FEB 10 2006

SID: 15747281

DOB: 02/26/50

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on June 13, 2005 on Counts IV and V, and found guilty on June 15, 2005, for Count I

by [X] plea [] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	Child Molestation in the First Degree	9A.44.073	N/A	06/01/04 - 07/30/04	045040 (Olympia PD)
IV	Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct	9.68A.050(1)	N/A	06/01/04 - 07/30/04	045040
V	Possession of Depictions of Minors Engaged in Sexually Explicit Conduct	9.68A.070	N/A	06/01/04 - 07/30/04	045040

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

JUDGMENT AND SENTENCE (JS)

(Felony) (6/19/2003) Page 1 of

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 Telephone: (253) 798-7400

06-9-01893-2

04-1-03722-2

as charged in the Amended Information

- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): NONE. ALL SEPARATE CRIMINAL CONDUCT.
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	Indecent Liberties	10/01/81	King County, WA	02/28/81 - 03/14/81	Adult	Sex
2	Rape in the Third Degree	04/17/92	King County, WA	07/31/91	Adult	Sex

- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	X	Life w/out Parole	N/A	Life w/out Parole	LIFE
IV	9	VII	60 months	N/A	60 months	5 years
V	---	Unranked	0-12 months	N/A	0-12 months	5 years

- 2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ below the standard range for Court(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

- 2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

- ☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- ☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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- 2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: NO AGREEMENTS RE: SENTENCING.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.
- 3.2 ☒ The court DISMISSES Counts II and III for the reasons set forth in the "Motion and Order for Dismissal Without Prejudice of Counts II and III"

IV. SENTENCE AND ORDER

IT IS ORDERED:

- 4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 110.00 Criminal Filing Fee

FCM \$ _____ Fine

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count _____ Minimum Term: _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement ☐
COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count _____ until _____ years from today's date ☐ for the remainder of the Defendant's life.

Count _____ until _____ years from today's date ☐ for the remainder of the Defendant's life.

Count _____ until _____ years from today's date ☐ for the remainder of the Defendant's life.

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ ~~1,110~~ TOTAL
 1,110.00 (does not include restitution)

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[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____.

[] defendant waives any right to be present at any restitution hearing (defendant's initials): _____.

☒ RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.7 [X] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with A.G. (d.o.b. 08/04/92) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for THE REMAINDER OF THE DEFENDANT'S LIFE (not to exceed the maximum statutory sentence).

[X] Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.11 BOND IS HEREBY EXONERATED

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4.12 **CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER.** The defendant was found to be a Persistent Offender.

☒ The court finds Count II is a most serious offense and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

☒ The court finds Count I is a crime listed in RCW 9.94A.030(31)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(31)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(31)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(31)(b)(i). = Indecent Liberties (98)

Those prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.

comparable to Child Molester

- (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Count I

<u>60</u>	months on Count	<u>IV</u>
<u>12</u>	months on Count	<u>V</u>
	months on Count	

Actual number of months of total confinement ordered is: Life without the possibility of early release.

- (b) **CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.

[] The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

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4.13

OTHER: _____

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count _____ Minimum Term: _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. []

COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

☒ COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.715:

Count IV 36 to 48 months, conditions as set forth in Appendix H

Count V 12 months, conditions as set forth in Appendix H.

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V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
- If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.
- If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

04-1-03722-2

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.7 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 2-10-06

JUDGE

Print name

JOHN A. MCCARTHY

Deputy Prosecuting Attorney

Print name:

JOHN HILLMAN

WSB #

25071

Attorney for Defendant

Print name:

AM Quilman

WSB #

6836

Defendant

Print name:

Harry Carrien

FILED
DEPT. 11
IN OPEN COURT

FEB 10 2006

Pierce County Clerk

By: _____
DEPUTY

04-1-03722-2

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3 **CERTIFICATE OF CLERK**4 **CAUSE NUMBER** of this case: 04-1-03722-2

5 I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

6 **WITNESS** my hand and seal of the said Superior Court affixed this date: _____.7 Clerk of said County and State, by: _____, Deputy Clerk
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APPENDIX B

STATE OF WASHINGTON

CAUSE NO.

81-1-31668-1 1985 APR -9 11:13 36

Plaintiff

DEFENDANT'S PETITION FOR LEAVE TO

vs

WITHDRAW PLEA OF GUILTY AND ENTER

PLEA OF NOT GUILTY AND ORDER FOR

DISMISSAL OF CAUSE

Harrier Nathan Carrier

Defendant

CERTIFIED
COPY

COMES NOW, the defendant Harry N. Carrier and respectfully petitions to this Court and represents as follows:

That he is the defendant in the above-entitled cause and on July 16, 1981 entered a plea of Guilty to the crime of Indecent Liberties, Ct. II that on October 9, 1981 Petitioner was granted probation by the Honorable Francis E. Holman Judge of the above-entitled Court, under an order deferring imposition of sentence until October 8, 1986 that the Petitioner has fulfilled the terms of his probation including the following specified conditions: Enter and complete sex counseling; no contact with minors unless supervised; costs, restitution (psychological evaluation); and maintain steady employment.

that the Petitioner was informed of and has obeyed the rules and regulations of the Office of Adult Probation and Parole; that the Petitioner has not been guilty of any offense against the law which he has failed to report to the parole officer; that the Petitioner's conduct during his period of probation has been to the best of his ability, satisfactory.

WHEREFORE, as provided by RCW 9.95.240, the Petitioner prays that he be permitted to withdraw or have set aside the plea or finding of "Guilty" to said charge and to enter a plea of "Not Guilty," and that upon entry of such plea of "Not Guilty" the said charges be dismissed and Petitioner discharged from all penalties and disabilities resulting from this cause.

Subscribed and sworn to this _____ day of _____, 19____

Petitioner

Notary Public in and for the State of _____

Residing at _____

ORDER OF DISMISSAL

Pursuant to the above petition, it is ordered that the defendant, Harry Nathan CARRIER be permitted to withdraw or have set aside the plea or finding of "Guilty" to the crime of Indecent Liberties, Ct. II and enter a plea of "Not Guilty." It is further

ORDERED, ADJUDGED AND DECREED that the above-entitled cause be, and the same is, hereby dismissed and the defendant discharged from further attendance herein and is released from all penalties and disabilities resulting from the filing of said charge.

DONE IN OPEN COURT this 5 day of April, 1985

Judge

Francis E. Holman

Approved for presentation:

Maagles 4/3/85
DIA

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POSTED

APPENDIX C

VERIFICATION BY PETITIONER

I, Harry Carrier, verify under penalty of perjury that the attached Personal Restraint Petition is true and correct and is filed on my behalf.

1313 N 13th Ave
Washington State
Walla Walla WA

Harry N. Carrier

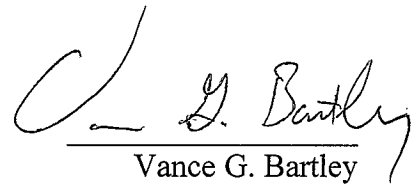
CERTIFICATE OF SERVICE

I, Vance G. Bartley, Paralegal for Law Offices of Ellis, Holmes & Witchley, PLLC, certify that on July 21, 2009 I served the parties listed below with a copy of *Personal Restraint Petition* as listed below:

Washington St. Supreme Court
Temple of Justice
PO BOX 40929
Olympia, WA 98504-0929

Harry Carrier
DOC NO. 278123
Washington St. Penitentiary
1313 N. 13th Ave
Walla Walla, WA 99362

7-21-09 Sea, WA
Date and Place


Vance G. Bartley